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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 RUSSELL BARKER,
10 Plaintiff,

11 v.

12 NORTHROP GRUNMAN SYSTEMS
13 CORPORATION and DOES 1-10,
14 Defendants.

Case No.: 3:21-cv-01192-BEN-MDD

**ORDER GRANTING MOTION TO
TRANSFER CASE**

[ECF No. 10]

15 This matter comes before the Court on Defendant Northrop Grunman Systems
16 Corporation's (Northrop Grunman) motion to compel arbitration, or in the alternative,
17 transfer venue. For the following reasons, the Court grants Northrop Grunman's
18 alternative request to transfer this case to the United States District Court for the Eastern
19 District of Virginia.

20 **I. Background**

21 Plaintiff Russell Barker is a former employee of Northrop Grunman, working there
22 from 2010 until 2021, when his employment was terminated. FAC ¶¶ 11, 26. As part of
23 his employment, Plaintiff entered into several international arbitration agreements
24 ("IAA's") that were in effect during his overseas assignments. These included provisions
25 for arbitration of disputes as well as a section labeled "Jurisdiction and Venue." The
26 arbitration provisions call for proceedings to be held in Falls Church, Virginia and the
27 Jurisdiction and venue section states in part:
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1 “[A]ny dispute, controversy, claim, or complaint determined by a court of
2 competent jurisdiction not to be arbitrable thereunder, shall be heard only in
3 the state and federal courts located in Virginia, U.S. Employee and Company
4 hereby waive any right each may have to assert that litigation in the Virginia
5 courts should not occur because it is inconvenient or to object to venue to the
6 extent any proceeding is brought in accordance with this paragraph. You and
7 the Company stipulate that the state and federal courts located in Fairfax
County, Virginia shall have in personam jurisdiction and venue for the
purpose of litigating any such dispute, controversy, claim, or complaint
arising out of or related to this Agreement.

8 ECF No. 10 at 24.

9 Northrop Grunman hired Plaintiff to perform the duties of a deployed Site
10 Manager for a program whose base of operations was in Kandahar, Afghanistan.
11 Complaint, ECF No. 1. At 3. This suit stems from allegations by the Plaintiff that he was
12 wrongfully passed over for a promotion in 2019, wrongfully demoted, and then
13 wrongfully terminated in 2021. Plaintiff, who was diagnosed with cancer, alleges his
14 work for Defendant caused his condition, particularly through exposure to toxic burn pits
15 while deployed. *Id.* at 6-7. Plaintiff, who lived in Nevada throughout his tenure with
16 Defendant, changed his “employment base” from Nevada to California and subsequently
17 entered the California disability system; while Plaintiff still lived and worked in Nevada
18 during this time, he received benefits from California. *Id.* Plaintiff worked remotely for
19 one of Defendant’s San Diego offices and would occasionally attend meetings in San
20 Diego as part of his employment.

21 In addition to several federal claims, Plaintiff alleges disability discrimination,
22 retaliation, and wrongful termination in violation of public policy all arising under
23 California’s Fair Employment and Housing Act (FEHA). Defendant now seeks transfer
24 of this case to the U.S. District Court for the Eastern District of Virginia in accordance
25 with the forum selection clause of the parties’ arbitration agreement.

26 II. DISCUSSION

27 The Court addresses Defendant’s alternative motion for venue transfer before
28 addressing the motion to compel arbitration. The forum selection clause (*see supra*)

1 states that any action relating to the scope of Plaintiff's employment shall be heard in the
2 state and federal courts of Virginia. If the forum selection clause is valid and
3 enforceable, then it is the Eastern District of Virginia, and not this Court, that should
4 determine the arbitration dispute.

5 "When the parties have agreed to a valid forum-selection clause, a district court
6 should ordinarily transfer the case to the forum specified in that clause. Only under
7 extraordinary circumstances unrelated to the convenience of the parties should a §1404(a)
8 motion be denied." *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for W. Dist. of Texas*,
9 571 U.S. 49, 62 (2013). Plaintiff argues the forum selection clause is invalid and, even if
10 it is valid, asserts that there is good cause for this Court to not enforce it. The Court
11 disagrees.

12 The Ninth Circuit provided guidance on the "extraordinary circumstances"
13 required in *Atlantic Marine*. "[W]e turn to the Court's prior guidance on this issue in *M/S*
14 *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972). *M/S Bremen* held that a forum-
15 selection clause was controlling unless the plaintiff made a strong showing that: (1) the
16 clause is invalid due to 'fraud or overreaching,' (2) 'enforcement would contravene a
17 strong public policy of the forum in which suit is brought, whether declared by statute or
18 by judicial decision,' or (3) 'trial in the contractual forum will be so gravely difficult and
19 inconvenient that [the litigant] will for all practical purposes be deprived of his day in
20 court.'" *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1088 (9th Cir.
21 2018) (quoting *M/S Bremen* at 15).

22 "Only under extraordinary circumstances unrelated to the convenience of the
23 parties should a § 1404(a) motion be denied . . . In the typical case not involving a forum-
24 selection clause, a district court considering a § 1404(a) motion (or a forum non
25 conveniens motion) must evaluate both the convenience of the parties and various public-
26 interest considerations. Ordinarily, the district court would weigh the relevant factors and
27 decide whether, on balance, a transfer would serve 'the convenience of parties and
28 witnesses' and otherwise promote 'the interest of justice.'" *Atl. Marine* at 62.

1 When the parties have a valid forum selection clause,¹ though, this analysis
 2 changes in three ways. First, the plaintiff's choice of forum merits no weight. Rather, as
 3 the party defying the forum-selection clause, the plaintiff bears the burden of establishing
 4 that transfer to the forum for which the parties bargained is unwarranted. Second, a court
 5 evaluating a defendant's § 1404(a) motion to transfer based on a forum-selection clause
 6 should not consider arguments about the parties' private interests. When parties agree to
 7 a forum-selection clause, they waive the right to challenge the preselected forum as
 8 inconvenient or less convenient for themselves or their witnesses, or for their pursuit of
 9 the litigation. A court accordingly must deem the private-interest factors to weigh
 10 entirely in favor of the preselected forum. Third, when a party bound by a forum-
 11 selection clause flouts its contractual obligation and files suit in a different forum, a §
 12 1404(a) transfer of venue will not carry with it the original venue's choice-of-law rules.
 13 *Id.* at 63-64.

14 Here, the only public interest Plaintiff can point to is his claim that “California
 15 has a strong public policy of having its [employee’s] claims litigated in California.” Pl.’s
 16 Opp’n, ECF No. 15 at 21. The Court does not find this compelling enough to outweigh
 17 the norm that a forum selection clause should be enforced. The case relied on by Plaintiff
 18 (*Depuy Synthes Sales, Inc. v. Stryker Corp.*, 2019 U.S. Dist. LEXIS 67403 (C.D. Cal.
 19 2019) also fails to convince because the strong public policy there dealt with “an
 20 employee who primarily resides in and works in California.” Cal. Lab. Code § 925.
 21 While Plaintiff provides a litany of cases supporting the proposition that California has a
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24 ¹ Here, the Court finds the forum selection clause valid. Plaintiff’s argument that the
 25 agreement attached to Defendant’s motion is expired fails. The plain and unambiguous
 26 language of the contract says the agreement covers legal claims arising during or after
 27 Plaintiff’s overseas assignment. ECF No. 10 at 24. The Court also does not find the
 28 agreement to be procedurally or substantively unconscionable. *See Powers v. Northrup*
Grumman Corp., No. 20CV1506 DMS(MSB), 2020 WL 6381899, at *5 (S.D. Cal. Oct.
 29, 2020).

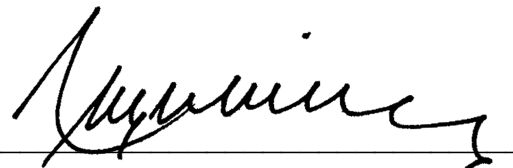
1 strong public interest in seeing its employment laws enforced, this Court is not convinced
2 this extends to Nevada residents working for a Virginia headquartered company.

3 Plaintiff also points out he has health problems that would make traveling to
4 Virginia difficult. Opp'n, ECF No. 15 at 22. While the Court is sympathetic to
5 Plaintiff's health condition, this is a private factor that this Court cannot afford any
6 weight to under the *Atlantic Marine* test. 571 U.S. at 63. Where the parties have agreed
7 to a forum-selection clause, they "waive the right to challenge the preselected forum as
8 inconvenient or less convenient for themselves or their witnesses, or for their pursuit of
9 the litigation." *Atl. Marine*, 571 U.S. at 64. A court must dismiss a suit filed "in a forum
10 other than the one specified in a valid forum-selection clause," even if it "makes it
11 possible for [plaintiffs] to lose out completely, through the running of the statute of
12 limitations in the forum finally deemed appropriate." *Id.* at 66 n.8, (alteration in original)
13 (quoting *Norwood v. Kirkpatrick*, 349 U.S. 29, 31 (1955)). "[W]hen the plaintiff has
14 violated a contractual obligation by filing suit in a forum other than the one specified in a
15 valid forum-selection clause . . . dismissal would work no injustice on the plaintiff." *Id.*
16 Plaintiff argues that he will need to hire a Virginia attorney in addition to the California
17 attorney he already retained and that this added expense will financially deprive him of
18 his day in court. Pl.'s Opp'n, ECF No. 15 at 22. The forum selection clause in Plaintiff's
19 employment agreement makes clear that consulting a Virginia attorney for this matter
20 was the appropriate move from the outset of this case.

21 For the foregoing reasons, Defendant's motion to transfer this case and the pending
22 motion to compel arbitration to the U.S. District Court for the Eastern District of Virginia
23 is granted.

24 **IT IS SO ORDERED.**

25 Dated: May 31, 2022

26 
27 **HON. ROGER T. BENITEZ**
28 United States District Judge